



Modern Awards Review 2023-24 (AM2023/21)

Submission cover sheet

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(Please provide the name of the person lodging the submission)

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(If this submission is completed on behalf of an organisation or group of individuals, please provide details)

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How to prepare a submission

Submissions should be emailed to awards@fwc.gov.au. Directions set out the due dates for submissions. Directions are issued by a Member of the Commission and will be published on the [Commission website](#).

Make sure you use numbered paragraphs and sign and date your submission.

Your submission. Provide a summary of your experience and any relevant issues. You may wish to refer to one or more of the issues outlined in the relevant discussion paper.

Issues

1. [Using numbered paragraphs, outline the main issues you want the Fair Work Commission to consider as part of the Modern Award Review 2023-34 including your responses to any questions set out in Commission discussion papers. Include, if possible, references to any relevant sections of the *Fair Work Act 2009*, or other legislation or specific clauses in modern awards that apply].

Proposals

2. [Tell us your proposals to the address the issues you have raised in the submission. If you are proposing that the Commission should consider varying an award, you should include draft wording for the proposed variation]

Signature: Julie Ryan

Name: Julie Ryan

Date: 12.03.2024



Response to the Fair Work Commission

Work and Care Discussion Paper

(Modern Awards Review 23-24)

March 2024



About Carers Tasmania

Carers Tasmania is the Peak Body representing the more than 80,000 informal carers (hereafter carers) in the state.

Carers Tasmania's vision is for an Australia that values and supports carers.

Our mission is to work to improve the health, wellbeing, resilience and financial security of carers and to ensure that caring is a shared responsibility of family, community, and government.

Our values drive everything we think, say, and do.

- **Carers first** – we listen to what carers need, commit to their desired action plan, and deliver results that matter most to carers
- **Care in all we do** – we care for our work, about each other, about Tasmania's family and friend carers, and the bigger world we all share
- **Integrity always** – we are transparent, act ethically, own when things don't go to plan and do what we say we will
- **Quality every time** – we don't accept 'good enough' because carers deserve our very best every time
- **Speed that matters** – we are agile and don't put off what can be done today.

These values represent how we engage with and serve carers, how we work with each other, and our commitment to the broader community. Carers Tasmania encourages partnership with governments and health and community sectors to enhance service provision and improve conditions for family or friend carers through policy development, research and advocacy.

We acknowledge and support people of all genders, sexualities, cultural beliefs, and abilities and understand that carers in Tasmania, whilst sharing the common theme of caring for a family member or friend, are diverse individuals with varying beliefs, experiences, and identities. We value and respect the diversity of carers, their lived and living experiences, and recognise that carers are the experts in their own lives.

Carers Tasmania has offices in Moonah, Launceston and Burnie.

Please direct any enquiries about this report to:

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1. Background

Carers Tasmania is the Peak Body representing the more than 80,000 informal carers within the state.

A carer is a person who provides unpaid care and support to a family member, or friend, with disability, mental ill health, a chronic or life-limiting condition, alcohol or other drug dependence, or who is frail or aged. Informal kinship carers who care for a child under the age of 18, because the parent is unable to, are also recognised as carers. Carers are predominantly family members, but may also be friends, neighbours, or colleagues. Informal carers are not to be confused with paid support workers who are often called 'carers', with the difference being that support workers are fully employed and remunerated with all the benefits of employment. On the contrary, informal carers perform their caring duties without remuneration, other than minimal carer payments and allowances from the Australian Government.

In addition to representing carers through the Peak Body activities, Carers Tasmania provides support to carers living in Tasmania through its service delivery arm, Care2Serve. The Australian Government Carer Gateway program is delivered through Care2Serve in Tasmania, as are other supports and services, such as the Tasmanian Government's Home and Community Care program.

The Carer Gateway program provides a range of services and supports for carers which are designed to build resilience, increase wellbeing, improve quality of life, and sustain carers to effectively continue their caring roles. The available supports include the provision of information, advice and referrals, holistic identification of carer strengths and needs through a carer support planning process, professional counselling, peer support, and coaching which aims to support carers in achieving specific goals.

Care2Serve, through the Carer Gateway, has capacity to fund certain instances of planned, practical support services such as in-home respite, personal care, domestic assistance, and meal preparation. Care2Serve may also fund items such as laptops to assist carers who are studying or trying to enter the workforce. Care2Serve also coordinates the provision of emergency support during instances where a carer may be unable to provide the care that they usually do, resulting from unexpected illness or injury of the carer.

2. Introduction

Carers Tasmania is pleased to respond to the Fair Work Commission's *Work and Care: Modern Awards 2023-24 Discussion Paper* (the Discussion Paper).¹ We commend the consideration of carers throughout the Discussion Paper, and particularly the specific focus on carers who are female, young carers, and carers of people with disability.

Whilst we acknowledge that this is a broad review of modern awards, 2022 and 2023 saw several inquiries that were specifically focused on combining paid work and caring responsibilities, including the Senate Select Committee on Work and Care² and the Australian Government Productivity Commission Inquiry into Carer Leave.³ We note that the Discussion Paper highlights many of the recommendations of these inquiries.

Our response addresses several areas of the Discussion Paper that are particularly relevant to carers, such as:

- Individual flexibility agreements
- The right to disconnect
- Support for better rostering rights and protections
- Amending the definition of immediate family
- Leave arrangements for carers including carers leave, sick leave and unpaid leave
- Other variations to modern awards, such as using the Commonwealth's carer definition as a baseline and for employers to also consider the additional caring roles recognised on a state-by-state basis.

Pleasingly, the Discussion Paper also highlights the importance of regular wage increases and better support for employees of the care and education sectors. This is important particularly because many carers either work within those sectors themselves and/or rely on services from those sectors to assist those they provide care for. This aligns with Recommendation 15 of the Senate Select Committee Inquiry into Work and Care.⁴

The Discussion Paper also emphasises the Australian Government's support of the Carers Australia Carer Inclusive Workplace Initiative.⁵ It is also important to acknowledge the Carers NSW Carers + Employers Workplace accreditation program,⁶ which organisations can choose to undertake following the Carer Inclusive Workplace Initiative or separately to that program.

¹ Fair Work Commission. (2024). Discussion Paper. *Work and Care: Modern Awards Review 2023-24*. Available from: <https://www.fwc.gov.au/documents/sites/award-review-2023-24/discussion-paper-work-and-care-290123.pdf>

² Commonwealth of Australia. (2023). *The Senate Select Committee on Work and Care: Final Report*. Available from: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Work_and_Care/workandcare/Report/section?id=committees%2freportsen%2f024994%2f80196

³ Productivity Commission, *A Case for an extended unpaid carer leave entitlement Inquiry Report* (September 2023). Available from: <https://www.pc.gov.au/inquiries/completed/carers-leave/report/carers-leave.pdf>

⁴ Commonwealth of Australia. (2023). *The Senate Select Committee on Work and Care: Final Report*. Available from: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Work_and_Care/workandcare/Report/section?id=committees%2freportsen%2f024994%2f80196

⁵ <https://carerinclusive.com.au/>

⁶ Carers NSW. <https://www.carersnsw.org.au/services-and-support/programs-services/carers-employers>

3. Response to the discussion questions

Individual flexibility agreements

Carers Tasmania supports increased protections for those who need it, to enable them better access to individual flexibility agreements. Some of the most recent improvements include increased safeguards for employees when employers decline a flexible working request. Employers are now required to provide suitable reasons for declining the request.

The Discussion Paper asks whether there are any specific variations to individual flexibility agreements under modern awards that are necessary to meet the modern awards objective. We encourage consideration of amending the current timeframe for an employer to respond to a request for a flexible working arrangement so that it is less than a 21-day period. Often for carers, the need to alter working arrangements may be more urgent than 21 days. It becomes even more challenging if an employer declines the request, as despite there being pathways to challenge a decision, these pathways are often lengthy, particularly for carers who have other competing priorities.

The following is a case study from a former carer living in Tasmania which highlights that despite modern awards providing rights for carers to request flexibility, it can still be quite difficult to come to an appropriate agreement within the timeframe required.

Case study: *Charlotte *name has been changed to protect privacy*

29/08/22: *Charlotte works for a government organisation and has done for the last 6.5 years. She is aged 62 and cares for her husband Bill who is aged 64. Bill has Dementia, is insulin dependent, has diabetes, is non-verbal, and has low mobility and vision. He is supported by the NDIS with 2:1 worker ratio, but Charlotte coordinates the support workers to ensure they are providing the right care and monitoring of his health.*

Charlotte was forced to work from home during the pandemic period and recently requested flexible working arrangements with a mixture of some in-office and some working from home hours to assist her in being close to her husband and monitoring his support workers. Charlotte's role is not face-to-face and can be completed effectively via phone, email, and online platforms. She worked like this successfully during the pandemic.

Her request for flexible working arrangements was refused. Charlotte said her employer was not open to any negotiation and she was told she is either in the office or not working at all. Her father passed away last month, and she took some leave for that. Her husband recently was admitted to hospital due to pneumonia and sepsis. She accompanied him in the ambulance and whilst he was in the hospital, she completed personal care tasks and fed him to keep his blood sugar levels stable. She also advocated for support from medical staff as they were run off their feet.

Upon returning home, Charlotte was told that she needed to come into the office or would be forced to take leave. Charlotte took forced annual leave whilst waiting for advice from her union representative and Fair Work. She didn't want to use this leave as she wanted to keep it for when it is needed as Bill's condition is unpredictable. Charlotte's employer/manager did not provide her anything in writing requesting her to take annual leave until she complies to return to the office.

Charlotte also had a meeting via teams with a supervisor who told her that perhaps she should consider resigning and 'just be a carer'. Charlotte said she feels like she is being discriminated against for trying to manage care and employment and that possibly they are trying to force her to retire.

Charlotte said this is very upsetting and feels conflicted and unsupported. She also reported feeling degraded by being called 'just a carer'. She has also received comments from another colleague in the past that her husband should just go into a nursing home. Charlotte's husband has severe and complex needs, and their goal is to keep him at home for as long as possible. Charlotte was upset and exhausted but said she will fight this with support from her union and Fair Work.

09/09/22: Charlotte sought advice from the Community and Public Sector Union (CPSU). They have agreed that this is a discrimination case, and the lawyer has requested a meeting with the employer and Charlotte. The first meeting did not go ahead due to technical difficulties on the employer's end but a new meeting was scheduled for the 14th of September. Charlotte said she is permitted to work from home until then. However, her husband is now in the hospital again and she is too upset to inform her employer.

15/09/22: Charlotte requested a phone call to check how the meeting with the lawyer and her employer went. Carers Tasmania phoned Charlotte as discussed and was informed that her husband had just died. She was too scared to tell her employer about what had happened and was seeking support from her union to do this. Charlotte said these last few months could have been different if she was adequately supported to work at home whilst being close to her husband in the final stages of life. It has been a nightmare and emotional roller coaster for her. She does not want anyone else to experience this sort of situation.⁷

The Discussion Paper seeks advice about potential variations that may be necessary to improve current working from home provisions. Working from home can be a suitable flexible working option. To provide stronger support for those seeking this arrangement as a flexible option, we suggest that for clarity, an additional item of 'where work is performed' be added to the list within modern awards. For example:

Despite anything else in this award, an employer and an individual employee may agree to vary the application of the terms of this award relating to any of the following in order to meet the genuine needs of both the employee and the employer:

(a) arrangements for when work is performed; or

(b) overtime rates; or

(c) penalty rates; or

(d) allowances; or

(e) annual leave loading, or

(f) where work is performed

⁷ Carers Tasmania. (2022). Balancing work and Caring Report. Available from: <https://carerstas.org/wp-content/uploads/2023/08/Carers-Tasmania-Report-on-Balancing-Employment-and-caring-2022.pdf>

The right to disconnect

Carers Tasmania supports legislative improvements that further protect the rights of employees to disconnect from work outside of their agreed working hours. This was a recommendation from the Senate Select Committee into Work and Care⁸ and is particularly important for carers, who are often juggling multiple responsibilities and may feel pressured to respond to work tasks out of hours, particularly if they work from home.

Notice of rosters and regular hours

Carers Tasmania supports the Senate Select Committee into Work and Care Recommendation 21, suggesting that all employees should have at least two weeks' notice in advance of their roster, except in exceptional circumstances.⁹ Having predictable and stable rosters is particularly important for carers who often need to plan support for the person they care for in advance, to enable them to work. We also encourage workplaces, wherever possible, to support carers with a regular pattern of working hours.

Definition of immediate family

Recommendation 17 from the Select Committee Work and Care Final Report noted that the definition of immediate family should be expanded. Carers Tasmania supports the additions proposed under this recommendation as below:

- Any person who is a member of an employee's household and has been for a continuous period of over 18 months.
- Any of the employee's children (including adopted, step and ex-nuptial children).
- Any of the employee's siblings (including a sibling of their spouse or de facto partner).
- Any other person significant to the employee to whom the employee provides regular care.¹⁰

We recommend that other persons of significance should include a brief description in brackets to reinforce the diversity of caring roles. This may include other family members such as nieces, nephews, aunts, uncles etc.

Furthermore, we suggest that kinship children also be recognised and included within this definition. Several state-based pieces of Carer Recognition Legislation, such as those from Tasmania, Queensland¹¹, Victoria¹² and the ACT¹³, include kinship children within their definitions of care.

⁸ Commonwealth of Australia. (2023). The Senate Select Committee on Work and Care: Final Report. Available from: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Work_and_Care/workandcare/Report/section?id=committees%2freportsen%2f024994%2f80196

⁹ Ibid.

¹⁰ Ibid.

¹¹ Queensland Carers Recognition Act (2008). Available from: <https://www.legislation.qld.gov.au/view/pdf/inforce/2012-06-27/act-2008-070>

¹² Victoria Carers Recognition Act (2012). Available from: <https://content.legislation.vic.gov.au/sites/default/files/2020-04/12-10aa003%20authorised.pdf>

¹³ ACT Carers Recognition Act (2021). <https://www.legislation.act.gov.au/a/2021-34>

Our recommendations would see the definition of immediate family appear as follows:

“A member of the employee’s immediate family means their:

- Spouse or former spouse
- De facto partner or former de facto partner
- Any of the employees’ children (including adopted, kinship, step and ex-nuptial children)
- Parent
- Grandparent
- Grandchild
- Any of the employee's siblings (including a sibling of their spouse or de facto partner)
- Any child, parent, grandparent, grandchild or sibling of the employee’s spouse or de facto partner (or former spouse or de facto partner)
- Any person who is a member of an employee's household and has been for a continuous period of over 18 months, or
- Any other person significant to the employee to whom the employee provides regular care (this may include other family members such as nieces, nephews, aunts, uncles etc).”

Unpaid carer’s leave

Noting the Productivity Commission’s suggestion around increased flexible working arrangements as an alternative to extended unpaid carer’s leave,¹⁴ we acknowledge that flexible working arrangements may be a suitable alternative for some carers. However, for others, the process of arranging flexible working may be too difficult or lengthy. We strongly encourage additional consideration (or even a small-scale trial and evaluation) of provisions for extended unpaid carers leave within Australia to determine the effectiveness of such an entitlement for both carers and employers.

Paid carer’s leave

Carers Tasmania supports the Senate Committee Recommendation 18,¹⁵ which suggests that the Australian Government should consider the adequacy of separating carers leave from other current paid leave entitlements. The experiences often shared by carers identifies the need for a provision of paid carers leave that is separate to their own personal leave and annual leave.

In certain scenarios, carers may require time off work to assist the person they care for to attend appointments related to their care needs. In these situations, the person they are supporting may not be necessarily unwell (as per the eligible reasons for personal leave use such as illness, injury, or emergency) and the carer may not have the capacity to make the time up or use annual leave. The Discussion Paper acknowledges that the situations in

¹⁴ Productivity Commission, A Case for an extended unpaid carer leave entitlement Inquiry Report (September 2023). Available from: <https://www.pc.gov.au/inquiries/completed/carers-leave/report/carers-leave.pdf>

¹⁵ Commonwealth of Australia. (2023). The Senate Select Committee on Work and Care: Final Report. Available from: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Work_and_Care/workandcare/Report/section?id=committees%2freportsen%2f024994%2f80196

which employees can access personal/carers leave may not allow carers to undertake caring related duties, such as organising formal care.¹⁶

In situations where the person they support does become unwell, carers often use up their own personal/carers leave (and sometimes annual leave), meaning they have reduced or no leave for themselves when they need it.

Carers who are in the workforce are often juggling multiple responsibilities and must be able to use their own personal and annual leave for themselves, so they have adequate time to rest and recover. This is incredibly important as carers often experience higher rates of ill health and disability themselves.¹⁷

As supported by the Senate Select Committee on Work and Care¹⁸ and the Productivity Commission Carer Leave Report,¹⁹ paid carers leave, and personal leave should be two separate and distinct entitlements. Separating these two forms of leave would better support carers to manage the support required for those they care for, and their own health and wellbeing so they can participate in employment.

The Discussion Paper describes both personal and carer leave provisions that are in place in other OECD countries, and, in particular, how Switzerland allows employees to take leave on full pay to care for a family member, at three days per occasion to a maximum of ten days per year.²⁰ We encourage consideration of introducing a similar provision for paid carers leave in Australia through a trial period. This would allow for initial data collection and preliminary analysis of the effectiveness of this form of leave provision.

Other variations to modern awards

Carers Tasmania recommends that, within the context of supporting carers in the workplace, the National Employment Standards (NES) and modern awards should recognise carers as defined under the Commonwealth *Carer Recognition Act 2010*, and also within legislation on a state-by-state basis.

We also support regular wage increases and better support for employees of the care and education sector. This will attract more workers to this critical sector and will also support the people who work in this area who are often also informal carers.

¹⁶ Fair Work Commission. (2024). Discussion Paper. Work and Care: Modern Awards Review 2023-24. Available from: <https://www.fwc.gov.au/documents/sites/award-review-2023-24/discussion-paper-work-and-care-290123.pdf>

¹⁷ https://www.carersaustralia.com.au/wp-content/uploads/2021/10/211011_Carer-Wellbeing-Survey-Executive-Summary_FINAL.pdf

¹⁸ Commonwealth of Australia. (2023). The Senate Select Committee on Work and Care: Final Report. Available from: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Work_and_Care/workandcare/Report/section?id=committees%2freportsen%2f024994%2f80196

¹⁹ Productivity Commission, A Case for an extended unpaid carer leave entitlement Inquiry Report (September 2023). Available from: <https://www.pc.gov.au/inquiries/completed/carers-leave/report/carers-leave.pdf>

²⁰ Family and Work in Switzerland, Absences from work due to illness or accident; Arranging childcare, (n.d.). Available from: <https://www.ch.ch/en/work/family-and-work/absences-from-work-due-to-illness-or-accident/>

4. Recommendations

In summary, Carers Tasmania recommends:

- Reducing the timeframe for employers to respond to requests for flexible working arrangements
- Specifically including working from home as a flexible working option in relevant documentation
- Strengthening the safeguards around rostering for employees, in particular, for carers
- Further amending the definition of immediate family, so that it is more reflective of the diversity of caring arrangements
- Exploring an extended entitlement for unpaid carers' leave
- Exploring the introduction of paid carers leave, separate to personal leave entitlements
- Recognising the Commonwealth definition of carer and various State and Territory definitions of carer in documentation, reflecting diversity of caring scenarios
- Continuing to review modern awards to identify opportunities to support carers to engage and remain in employment.

To conclude, we support this important review into modern awards, and the particular focus on improving conditions for carers who are participating in paid employment.